

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Hafner	Team: Squad #04	CCRB Case #: 202303338	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/15/2023 6:40 PM	Location of Incident: 157th Street subway station (1 Train Line)	18 Mo. SOL 9/15/2024	Precinct: 33		
Date/Time CV Reported Fri, 04/14/2023 12:53 PM	CV Reported At: CCRB	How CV Reported: E-mail	Date/Time Received at CCRB Fri, 04/14/2023 12:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO John Zaccara	23839	955686	033 PCT
2. LT Lillian Montenegro	00000	942796	TD 3
3. PO Erick Mero	14886	916217	033 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Gilbert Vega	04451	923306	033 PCT
2. PO Jennifer Santana	22718	970182	TD 3
3. PO Odali Cruz	17144	957499	033 PCT
4. LT William Beissel	00000	934469	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO John Zaccara	Abuse: Police Officer John Zaccara improperly used his body-worn camera.	
B . PO John Zaccara	Abuse: Police Officer John Zaccara interfered with § 87(2)(b) use of a recording device.	
C . PO John Zaccara	Abuse: Police Officer John Zaccara threatened to arrest § 87(2)(b)	
D . PO John Zaccara	Discourtesy: Police Officer John Zaccara spoke discourteously to § 87(2)(b)	
E . PO John Zaccara	Abuse: Police Officer John Zaccara stopped § 87(2)(b)	
F . LT Lillian Montenegro	Abuse: Lieutenant Lillian Montenegro threatened to arrest § 87(2)(b)	
G . LT Lillian Montenegro	Abuse: Lieutenant Lillian Montenegro failed to provide § 87(2)(b) with a business card.	
H . PO John Zaccara	Abuse: Police Officer John Zaccara failed to provide § 87(2)(b) with a business card.	
I . PO Erick Mero	Abuse: Police Officer Erick Mero failed to provide § 87(2)(b) with a business card.	

Case Summary

On April 5, 2023, an anonymous complainant filed a complaint, via email to the CCRB, on behalf of § 87(2)(b).

On March 15, 2023, at approximately 6:40pm, § 87(2)(b) was inside the 157th Street subway station of the 1-train line, in Manhattan. Police Officer John Zaccara, from the 33rd Precinct, approached § 87(2)(b) without activating his body-worn camera (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Zaccara repeatedly instructed § 87(2)(b) to stop filming (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Zaccara told § 87(2)(b) that he could be “locked up” (**Allegation C: Abuse of Authority**, § 87(2)(g)). PO Zaccara told § 87(2)(b) “I know you think you’re smart, but you’re not” (**Allegation D: Discourtesy**, § 87(2)(g)). PO Zaccara stopped § 87(2)(b) after he refused to leave the subway station (**Allegation E: Abuse of Authority**, § 87(2)(g)). Additional officers including Lieutenant Lillian Montenegro from Transit District 3 arrived. Lt. Montenegro instructed § 87(2)(b) that he would be arrested if he did not leave the subway station (**Allegation F: Abuse of Authority**, § 87(2)(g)). Lieutenant Lillian Montenegro failed to provide § 87(2)(b) with a business card (**Allegation G: Abuse of Authority**, § 87(2)(g)). After leaving the subway station, § 87(2)(b) approached PO Zaccara and Police Officer Erick Mero, also from the 33rd Precinct, and asked for their business cards. Neither officer provided a business card (**Allegation H: Abuse of Authority**, § 87(2)(g)). **Allegation I: Abuse of Authority**, § 87(2)(g).

No arrests or summons were issued because of this incident.

The CCRB obtained BWC footage from LT Montenegro, Sergeant Gilbert Vega, Police Officer William Beissel, Police Officer Odali Cruz, Police Officer Jennifer Santana, PO Mero, and PO Zaccara (**BR 1**). § 87(2)(b) provided two YouTube videos capturing the incidents that were posted to his YouTube channel “§ 87(2)(b)” (**BR 2**) (**BR 3**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Zaccara improperly used his body-worn camera.

Allegation (B) Abuse of Authority: Police Officer John Zaccara interfered with § 87(2)(b) use of a recording device.

Allegation (D) Discourtesy: Police Officer John Zaccara spoke discourteously to § 87(2)(b).

§ 87(2)(b) said (**BR 4**) that PO Zaccara approached § 87(2)(b) and told him he could not record in the train station and could not record the booth or the booth teller.

In § 87(2)(b) first video (**BR 3**), PO Zaccara first interacts with § 87(2)(b) at 8:17. PO Zaccara tells § 87(2)(b) that he “has to go.” At 8:36, PO Zaccara tells § 87(2)(b) that he “can’t video tape down here.” § 87(2)(b) asks, “Why not?” PO Zaccara responds that it is “against the law.” PO Zaccara repeatedly tells § 87(2)(b) to leave the subway and that he is not allowed to film in the subway station. § 87(2)(b) continues to refuse to leave. At 9:45, PO Zaccara turns on his BWC.

In PO Zaccara’s BWC recording (**BR 5**), PO Zaccara and § 87(2)(b) are interacting at 00:00, but there is no audio until 00:59. At no point is § 87(2)(b) seen using anything other than his cellphone to film. At 7:31, PO Zaccara tells § 87(2)(b) “I know you think you’re smart, but you’re not.”

PO Zaccara said (BR 6) that he misunderstood the rules of filming in the transit system and thought it was not allowed. PO Zaccara did not see § 87(2)(b) recording with any equipment other than his cellphone. PO Zaccara did not recall saying to § 87(2)(b) “I know you think you’re smart, but you’re not,” even after being shown video evidence. PO Zaccara’s intention in this comment was “interaction,” and the interaction had the goal of “speaking.” PO Zaccara would have meant that § 87(2)(b) was not fully informed on the laws and that he could be ejected from the transit system.

NYPD Patrol Guide 212-123 (BR 8) states that all Members of Service must “Activate BWC prior to engaging in any police action” and that they must “record any interactions that escalate to become adversarial or may hold evidentiary value.”

NYCT and MTA Rules of Conduct §1050.9(c) (BR 7) states “Photography, filming or video recording in any facility or conveyance is permitted except that ancillary equipment such as lights, reflectors or tripods may not be used. Members of the press holding valid identification issued by the New York City Police Department are hereby authorized to use necessary ancillary equipment. All photographic activity must be conducted in accordance with the provisions of this Part.”

NYPD Administrative Guide 200-02 (BR 10) states officers are required to “render [their] services with courtesy and civility.”

Video evidence shows that PO Zaccara approached § 87(2)(b) and engaged in a police action by telling § 87(2)(b) to leave the subway station because he believed him to be in violation of a law. This occurred approximately 1 minute and 28 seconds before PO Zaccara activated his BWC. Their interaction was almost immediately adversarial as § 87(2)(b) questioned PO Zaccara’s orders and refused to leave the subway station. PO Zaccara did not activate his BWC prior to engaging in police action and failed to activate his BWC when the interaction first became adversarial as required by NYPD Patrol Guide 212-123. § 87(2)(g)

PO Zaccara told § 87(2)(b) he was not allowed to film in the subway station and that he had to leave the station for that reason. PO Zaccara admitted he misunderstood the rules governing filming in the MTA system. Under NYCT and MTA Rules of Conduct §1050.9(c), filming is permitted except for when ancillary equipment is in use. § 87(2)(g)

PO Zaccara was unable to give an acceptable reason for his comment, “I know you think you’re smart, but you’re not.” His speculative reasoning was to inform § 87(2)(b) that he was “misinformed” or something he said with the purpose of “speaking.” § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer John Zaccara threatened to arrest § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer John Zaccara stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Lieutenant Lillian Montenegro threatened to arrest § 87(2)(b)

§ 87(2)(b) said (BR 4) that he was recording the booth and booth operator but that he did not speak to the booth operator. § 87(2)(b) guessed that the booth operator felt uncomfortable because PO Zaccara then approached § 87(2)(b). PO Zaccara told § 87(2)(b) he was being

detained. Lt. Montenegro told § 87(2)(b) that he had to leave the subway station, or he would be arrested.

In § 87(2)(b) first video (**BR 2**), at run time 00:36, § 87(2)(b) begins filming through the window of the MTA booth. At 00:41, § 87(2)(b) begins filming the booth operator and continues until 1:21. At 1:13, the booth operator mouths something inaudible towards § 87(2)(b) before waving in § 87(2)(b) direction. At 1:21, the booth operator raises his hand in apparent exasperation. At 1:31, the booth operator says something inaudible to § 87(2)(b) and § 87(2)(b) tells him he is unable to hear him. § 87(2)(b) repeats he cannot hear him, and the booth operator holds his hand up in a “c” shape as if to mime holding a phone. At 1:40, § 87(2)(b) asks the booth operator if “he [is a] Crip.” The booth operator leans and points towards § 87(2)(b) phone and makes the “c” shaped hand motion again. § 87(2)(b) again, asks the booth operator if he is a “Crip.” At 1:50, the booth operator walks away, and § 87(2)(b) continues to film the booth through the window. At 3:36, the booth operator is on the phone and § 87(2)(b) states that “he is calling somebody.” At 6:20, the booth operator says, “officer to the booth,” over the loudspeaker. § 87(2)(b) says to himself, “here we go.” At 15:05, PO Zaccara tells § 87(2)(b) that “maybe § 87(2)(b) could get § 87(2)(b) self locked up.” At 15:15, § 87(2)(b) asks PO Zaccara what crime he could be arrested for. PO Zaccara says, “Find out when I do your online.” At 16:26, PO Zaccara tells § 87(2)(b) to “hangout” and then directs § 87(2)(b) towards the corner of the subway station. § 87(2)(b) repeatedly asks PO Zaccara if he is detained. At 16:50, PO Zaccara tells him, “Yes.”

In § 87(2)(b) second video (**BR 3**), at 3:57, § 87(2)(b) asks Lt. Montenegro if he will be arrested if he stays. Lt. Montenegro tells § 87(2)(b) “Yes, because now you are trespassing.”

PO Zaccara said (**BR 6**) that he was flagged down by an MTA booth operator who stated that § 87(2)(b) had come up to his booth and put a camera in his face. § 87(2)(b) had asked for the booth operator’s name, and when the booth operator stated it was § 87(2)(b) with a C, § 87(2)(b) asked § 87(2)(b) if he was a “crip.” The booth operator told PO Zaccara this information and that § 87(2)(b) had been making him uncomfortable. PO Zaccara believed § 87(2)(b) was “annoying, harming, or causing concern.” PO Zaccara approached § 87(2)(b) and asked § 87(2)(b) to leave because § 87(2)(b) was “bugging” the booth operator. It did not seem that § 87(2)(b) was going to leave because § 87(2)(b) stated that he would be continuing his business. PO Zaccara interpreted § 87(2)(b) “business” to mean that he was going to continue contact with the booth operator. § 87(2)(b) was trespassing because PO Zaccara had issued a lawful order to § 87(2)(b) to leave. § 87(2)(b) was not free to go because he may have been arrested or issued a summons for trespassing. PO Zaccara told § 87(2)(b) to stay put because § 87(2)(b) wanted a supervisor. PO Zaccara was unsure if the supervisor was going to arrest him or let him go. PO Zaccara did not recall telling § 87(2)(b) that he could arrest him.

Lt. Montenegro said (**BR 12, 13**) that officers told her they had been trying to eject § 87(2)(b) but he was not complying with their orders. Lt. Montenegro believed § 87(2)(b) should be ejected because she did not believe he was there to ride the train and he had become a nuisance to MTA employees. Lt. Montenegro told § 87(2)(b) that he could either leave voluntarily or be forcibly ejected. § 87(2)(b) asked Lt. Montenegro if he would be arrested. Lt. Montenegro told § 87(2)(b) that if he refused to leave, he would be arrested for trespassing.

NYPD Patrol Guide Procedure 212-11 (BR 9) stated that a Terry Stop/Level 3 encounter is any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away. A stop may be conducted only when a

police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor.

NYCT and MTA Rules of Conduct §1050.7(i) (BR 7) states “No person on or in any facility or conveyance shall...conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace.”

NYPD Patrol Guide 212-20 (BR 11) states that “[a]ny person who violates any portion of NYCRR Part 1050, regardless of whether or not that person has also been issued a Transit Adjudication Bureau/Notice of Violation (TAB summons) or a Criminal Court Summons for that violation, is subject to ejection from New York City Transit facilities.”

NYPD Patrol Guide 208-01 (BR 22) states that a uniformed member of service may make an arrest for an offense when there is reasonable cause to believe the offense is committed within his presence.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Lt. Montenegro was informed that § 87(2)(b) had refused to leave the transit system after attempts by other officers to eject him. Under NYPD Patrol Guide 212-20, § 87(2)(b) was required to leave when given the ejection order, and since he was not in compliance, he could have been arrested for trespassing. § 87(2)(g)
[REDACTED]

Allegation (G) Abuse of Authority: Lieutenant Lillian Montenegro failed to provide § 87(2)(b) with a business card.

Allegation (H) Abuse of Authority: Police Officer John Zaccara failed to provide § 87(2)(b) with a business card.

Allegation (I) Abuse of Authority: Police Officer Erick Mero failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) said (BR 4) that he asked all the officers for their business cards. PO Zaccara did not provide his business card and walked away. Other officers pointed to their shields.

In Lt. Beissel’s BWC recording (BR 12), at runtime 1:46, § 87(2)(b) is heard asking Lt. Montenegro for her business card. Lt. Montenegro begins providing her information, but § 87(2)(b) insists on her card again. Lt. Montenegro tells § 87(2)(b) that she does not have one, but that she can write down her information if he has a pen and paper. At 1:55, § 87(2)(b) says, “one of you guys has a card on you.” Lt. Montenegro tells § 87(2)(b) that he is talking to her. Lt. Montenegro repeats her information to § 87(2)(b) tells her she needs to write it down, as they continue walking out of the subway station. § 87(2)(b) then begins asking why he is being ejected again.

Lt. Montenegro said (BR 12, 13) that § 87(2)(b) asked her for a business card. Lt. Montenegro did not have any cards with her, so she offered to write down her information for § 87(2)(b) if he had a pen and paper, as she did not have a way to write down her information herself.

In § 87(2)(b) second video (BR 2), at runtime 00:00, § 87(2)(b) asks PO Zaccara for his business card. PO Zaccara tells § 87(2)(b) that he could write it down for him but does not move to write it down; no other officer is in the direct vicinity at this point. At runtime 17:16, § 87(2)(b) sees PO Zaccara and PO Mero again and asks them for their cards. PO Zaccara tells § 87(2)(b) that he does not have a card on him. § 87(2)(b) states PO Zaccara must write it down. PO Zaccara states that “in the patrol guide if I do not have a card on me, I can give you my identification.” PO Zaccara states his name, its spelling, his shield number, and his precinct. At 17:36, § 87(2)(b) asks PO Mero for his name. PO Mero tells § 87(2)(b) his name. § 87(2)(b) tells PO Mero that he needs his card. PO Mero points to his badge, but it is unclear what he says. Both officers leave without producing cards.

PO Zaccara said (BR 6) that § 87(2)(b) asked him for his card. PO Zaccara verbally provided his information but did not believe anything else was required of him if he did not have a business card. PO Zaccara did not make an accommodation for § 87(2)(b) to write down his information but allowed § 87(2)(b) to take a photo of his information.

PO Mero said (BR 15) that § 87(2)(b) asked him for a business card, and he did not provide one because he did not have any business cards with him. PO Mero did not have any piece of paper with him. PO Mero did not try to write down his information because he and PO Zaccara were exiting the location and because he believed § 87(2)(b) was recording the situation. § 87(2)(b) would be able to review the footage for his information if he wanted it.

NYPD Administrative Guide 304-11 (BR 15) states that “Uniformed members of the service may offer business cards, as appropriate, and at their discretion, in situations that fall outside of the defined law enforcement activities. In addition, members are also to provide business cards, as appropriate, at the request of members of the public.” When out of RTKA Business Cards, uniformed members of service must “Allow member of the public ample time to write down identification information.”

Lt. Montenegro was unable to provide § 87(2)(b) with a business card as she had run out. Lt. Montenegro vocalized the option of writing down her information for § 87(2)(b) as required by NYPD Administrative Guide 304-11. § 87(2)(g)

PO Mero and PO Zaccara were both asked by § 87(2)(b) to give their business cards, but neither provided one citing the fact that they had none left. Neither officer made an attempt to write down their information or give § 87(2)(b) a chance to write down their information as required by NYPD Administrative Guide 304-11. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

§ 87(2)(b)

- PO Zaccara (**BR 18**) has been a member of service for 10 years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- Lt. Montenegro (**BR 19**) has been a member of service for 17 years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- PO Mero (**BR 20**) has been a member of service for 28 years and has been a subject in six CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)


Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 19, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**BR 17**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad No.: 4

Investigator:		Inv. Daniel Hafner	November 20, 2023
	Signature	Print Title & Name	Date

Squad Leader:	Raquel Velasquez	IM Raquel Velasquez	11/20/2023
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date